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OFFICE OF PETITIONS

In re Application of :  
Papadopoulou et al. :  
Application No. 08/931,721 : ON PETITION  
Filed: 16 September, 1997 :  
Attorney Docket No. 1038-729MIS: :

This is a decision in reference to the paper styled "Further Renewed Petition to Revive an Abandoned Application" filed on 23 January, 2003, which, in the absence of a fee, is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency action.

This application became abandoned on 20 August, 2000, for failure to file a timely response to the Notification of Non-Compliance with 37 CFR 1.192(c), mailed on 19 July, 2000, which set a one (1)-month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. The petition filed on 29 September, 2000, was dismissed in a decision mailed on 22 August, 2002. The renewed petition filed on 12 November, 2002, was dismissed on 23 December, 2002.

The present petition is accompanied by a Request for Continued Examination (RCE) Request and payment therefor. The RCE Request

indicates that the present renewed petition is the submission required under 37 CFR 1.114.

A review of the official file reveals that the petition fee required by 37 CFR 1.137(b) was never paid. On 29 September, 2000, petitioners submitted a payment of \$130.00. However, the petition fee for a petition under 37 CFR 1.137(b) was \$1,210.00 on 29 September, 2000. As such, a proper petition under 37 CFR 1.137(b) was never filed. As the fee for filing a petition under 37 CFR 1.137(b) is now \$1,300.00, a petition fee of \$1,300.00 is due. However, the Office will credit the \$130.00 previously paid towards the fee due. As such, a deficiency of \$1,170.00 is due with any petition under 37 CFR 1.137(b).

In the absence of the petition fee, which is required by law, the PTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment.<sup>1</sup> The PTO will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.<sup>2</sup> As petitioner has not alleged circumstances which would warrant the withdrawal of the holding of abandonment, the petition will be dismissed.

Additionally, petitioner is also advised that the petition clearly fails to meet the requirements of 37 CFR 1.114. 37 CFR 1.114(c) provides:

A submission as used in this section includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability. If reply to an Office action under 35 U.S.C. § 132 is outstanding, the submission must meet the reply requirements of § 1.111.

The petition in and of itself, however, may not serve as the submission. As 37 CFR 1.137(b)(1) indicates, a submission under 37 CFR 1.114 is required. When an RCE is the reply filed pursuant to 37 CFR 1.137(a)(1) or 1.137(b)(1) to revive the application, the submission accompanying the RCE must be a reply responsive within the meaning of 37 CFR 1.111. Consideration of whether the submission is responsive within the meaning of 37 CFR 1.111 to the last Office action is done without factoring in the

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<sup>1</sup>See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).

<sup>2</sup>MPEP 711.03(c); see 35 U.S.C. 41(a)(7).

"final" status of such action. The submission may be a previously filed amendment after final or a statement that incorporates by reference the arguments in a previously filed appeal or reply brief.<sup>3</sup>

Petitioner should file a renewed petition with a proper submission under 37 CFR 1.114.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner of Patents and Trademarks  
Box DAC  
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By FAX: (703)308-6916  
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite CP4-3C23  
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Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.



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<sup>3</sup>See MPEP 706.07(h), paragraph II; MPEP 711.03(c)(2)(d).